BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Mullican Heating & Cooling Personal Property Account No. 108905 Tax year 2007	)))	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

Appraisal	Assessment
$74,600	$22,380

On July 27, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, the property in question was not appealed to the Metropolitan Board of Equalization ("county board") during its regular 2007 session.

The undersigned administrative judge conducted a hearing of this matter on September 18, 2007 in Nashville. The appellant Billy K. Mullican, owner of Mullican Heating & Cooling, was represented by Brentwood CPA Wayne Wells. Kenneth Vinson, an employee of the Assessor's office, appeared on her behalf.

Findings of Fact and Conclusions of Law

Mullican Heating & Cooling was formerly based on Murfreesboro Road in Nashville. Recently, with Mr. Mullican nearing retirement, he decided to move the company's office to the basement of his house in Antioch. The assessment of the tangible personal property at that location is not in dispute. Rather, this appeal stems from a "forced assessment" on a separate account that was created some years ago for the reporting of certain items (e.g., used parts and inventory) stored in leased space at the Cornelia Fort Airpark.[1] The quantity of items in storage there, Mr. Wells declared, has since dwindled considerably.

Mr. Vinson's research of the Assessor's official records revealed that the taxpayer had most recently filed a timely personal property schedule (Schedule "B") for the subject account in tax year 2005. Based on the "small business" certification permitted by Tenn. Code Ann. section 67-5-903(b), the property was assessed in that tax year at the nominal amount of $300. When the taxpayer failed to file a schedule on this account in 2006, the assessment was slightly increased to $375 (based on an estimated value of $1,250). Notice of that forced assessment, which was paid without protest, was sent to the Airpark address.

[1]The hangar where the personal property in question is housed is owned by Colemill Enterprises, Inc. (one of Mullican Heating & Cooling's customers). A now-inoperable aircraft belonging to Mr. Mullican is also stored at this site. According to his testimony, it has never been used in the business.

Despite the historically low valuations of the subject property, the Assessor drastically increased the forced assessment on this account in tax year 2007 to $22,380.[2] The Assessor's office again mailed the assessment change notice, dated May 18, 2007, to 2640 Airpark Drive. Mr. Mullican could not recall exactly when he received that notice; presumably, however, the deadline specified on it for appeal to the county board (June 15, 2007) had already passed. He promptly submitted this appeal to the State Board in the hope of obtaining relief.

At the hearing, the appellant recalled that he and his secretary had telephoned the "tax place" on several occasions to request that all future statements for Mullican Heating & Cooling be directed to his home or post office box address – instead of the "empty building" at the Cornelia Fort Airpark. Mr. Vinson countered that the taxpayer had always responded to the previous assessment change notices mailed to 2640 Airpark Drive.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

> The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In this regard, the Tennessee Attorney General has opined that:

> The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived with the consent of the parties. [Emphasis added.]

Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 10.

The validity of a notice of forced assessment (or any other assessment change notice, for that matter) does not depend on whether or when it was actually received by the taxpayer. Tenn. Code Ann. section 67-5-903(c) only requires the assessor to mail such a notice to the "last known address" of the taxpayer.

It is not unusual, of course, for a single taxpayer to have more than one business location and tangible personal property account. Nor does every taxpayer who has multiple places of business necessarily wish to have the personal property assessments or tax bills for those different locations sent to the same address.

In this case, Mr. Mullican's vague reference to "tax place" leaves some doubt as to whether he called the Assessor's office – as opposed to the Metropolitan Trustee (the tax collecting

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[2]State Board Rule 0600-5-.06(5) provides that:

> In making forced assessments on non-reporting accounts, the following factors shall be considered:
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> (a) **previous data on file for that account**;
> (b) data from comparable accounts;
> (c) data collected during any field visits. [Emphasis added.]

official) – about the preferred mailing address. In any event, whatever contact Mr. Mullican may have had with the Assessor's office admittedly fell short of written notification of a change of address (either by letter or on the Schedule "B" itself). The administrative judge is not persuaded, then, that the notice of the forced assessment under appeal was defective.

Yet Tenn. Code Ann. section 67-5-1412(e) affords a taxpayer the opportunity to demonstrate "reasonable cause" for failure to make complaint to the county board. Ordinarily, mere proof of non-receipt or delayed receipt of an assessment change notice would not be deemed sufficient to justify acceptance of a direct appeal to the State Board under the reasonable cause statute. *See*, e.g., Michael & Stephanie Davis (Davidson County, Tax Year 1993, Final Decision and Order, November 18, 1995). But the record in this proceeding establishes that the appellant (and his secretary) at least made some efforts – albeit over the telephone – to redirect what heretofore had been trifling assessments on the subject property to the administrative office of his business. In the opinion of the administrative judge, Mr. Mullican could not reasonably have foreseen that a failure to take more formal action might result in an assessment of this magnitude.

Order

It is therefore ORDERED that, within ten (10) days after the date of entry hereof, the taxpayer shall file the completed schedule required by Tenn. Code Ann. section 67-5-903(d) with the administrative judge and send a copy to the Assessor's office. Within five (5) days after receipt of such schedule, the Assessor shall inform the administrative judge in writing whether or not she accepts the value claimed thereon. If the Assessor does accept such value, the subject property shall be appraised and assessed accordingly for tax year 2007. If the Assessor does not accept such value, this matter will be reset for hearing upon proper notice.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of November, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Billy K. Mullican, Mullican Heating & Cooling
Kenneth Vinson, Davidson County Assessor's Office
Jo Ann North, Davidson County Assessor of Property

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